



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2012-0293; FRL-9781-5]

Approval and Promulgation of Implementation Plans; State of Kansas; Idle Reduction of Heavy-Duty Diesel Vehicles and Reduction of Nitrogen Oxides (NO_x) Emissions for the Kansas City Ozone Maintenance Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Kansas State Implementation Plan (SIP) submitted by the State of Kansas on July 27, 2010. The revision includes two new rules which implement restrictions on the idling of heavy duty diesel vehicles and reduce nitrogen oxide (NO_x) emissions at stationary sources in the Kansas portion of the Kansas City Maintenance Area for ozone. EPA is approving this revision because the standards and requirements set by the rules will strengthen the Kansas SIP. EPA's approval of this SIP revision is being done in accordance with the requirements of the Clean Air Act (CAA).

DATES: This direct final rule will be effective [insert date 60 days from date of publication in the **Federal Register**], without

further notice, unless EPA receives adverse comment by [insert date 30 days from date of publication in the **Federal Register**].

If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No.

EPA-R07-OAR-2012-0293, by one of the following methods:

1. <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
2. Email: kemp.lachala@epa.gov
3. Mail or hand delivery: Lachala Kemp, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219.

Instructions: Direct your comments to Docket ID No. EPA-R07-OAR-2012-0293. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov> or email information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> website is an "anonymous access" system, which means EPA will not know your

identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 to

4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lachala Kemp at (913) 551-7214 or by email at kemp.lachala@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to EPA.

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I. What is the Background for Today's Action?

The *Kansas City Eight-Hour Ozone Maintenance Plan*, which was approved by EPA and became effective on October 9, 2007, contains contingency measures that are triggered upon a violation of the 1997 8-hour ozone national ambient air quality standard. These contingency measures include a heavy-duty diesel idle reduction regulation and a NO_x emissions reduction regulation for Johnson and Wyandotte counties. A violation of the 1997 8-hour ozone standard occurred thereafter, thus

triggering the adoption of these rules.

II. What Revisions is EPA Approving?

On July 27, 2010, Kansas submitted to EPA for approval into the Kansas SIP two new rules for the Kansas portion of the Kansas City Ozone Maintenance Area: Kansas Administrative Regulation (K.A.R.) 28-19-712 and K.A.R. 28-19-713. These rules became effective in Kansas on June 25, 2010. The idle reduction rule at K.A.R. 28-19-712 limits the amount of time a heavy duty diesel vehicle in Johnson and Wyandotte Counties in Kansas will be permitted to idle while parked or while waiting to load or unload. It also places responsibilities on freight load or unload locations to limit the idling of heavy duty diesel vehicles or commercial vehicles while at their location.

Per K.A.R. 28-19-712a, this rule applies to owners or operators of commercial, public or institutional heavy duty diesel vehicles (those having a gross vehicle weight rating (GVWR) of greater than 14,001 pounds) that are designed primarily to transport persons or property on public streets and highways.

K.A.R. 28-19-712b sets a time limit of five minutes idling time (i.e., when a vehicle's engine is operating but not in gear) in any sixty minute period, with some exceptions noted in K.A.R. 28-19-712c and 28-19-712d, as described below. In addition, the regulations restrict idling of heavy-duty diesel

vehicles that are also commercial vehicles to thirty minutes in any sixty minute period at load or unload locations. K.A.R. 28-19-712c.

The regulation specifies exemptions to the idling limit for certain vehicle types and situations. These exemptions are listed in K.A.R. 28-19-712d and include: road traffic conditions; operating equipment for safety or emergency uses; police, fire, ambulance, public safety and other law enforcement vehicles; service and repair needs; state or Federal equipment inspections; mechanical work; armored vehicles; bus idling for passenger comfort (no greater than fifteen minutes in any sixty minute period); vehicles idling for purposes of using sleeper berth compartments; mechanical difficulties; agricultural operations in which the vehicle is only incidentally operated or moved upon public roads; and vehicles using auxiliary equipment powered by the engine.

Kansas intends to use financial incentives, compliance assistance and public education as the primary tools to implement the heavy-duty diesel idling rule. It intends to reprioritize its existing contractual agreements with the locally affected governmental agencies to emphasize the need for public outreach, education and compliance assistance to facilitate this implementation. Furthermore, in appropriate cases, Kansas has statutory authority under K.S.A. 65-3018 to

seek penalties. Based on this, EPA has determined that this rule meets the applicable criteria for enforceability of SIP requirements.

The NO_x emissions reduction rule at K.A.R. 28-17-713 will apply to owners and operators of stationary sources located in Johnson and Wyandotte counties that emit NO_x in an amount equal to or greater than 1,000 tons per year for the entire facility, based on the average of total emissions for the 2005, 2006 and 2007 calendar years (the three-year period in which the violation of the ozone standard was recorded). No owner or operator of an emission unit subject to the rules may allow or permit NO_x to be emitted in excess of specified emission limits. The Kansas regulations further require owners and operators to install, operate, and maintain such equipment as necessary to achieve the emission limits and to demonstrate compliance using a certified continuous emission monitoring system (CEMS).

Three facilities are affected by this rule. Two of these are the Kansas City Board of Public Utilities (BPU) power generating facilities located in Wyandotte County - the Nearman Creek Power Station and the Quindaro Power Station. The other affected facility is AGC Flat Glass North America located in southern Johnson County.

III. Why is EPA Approving Kansas's SIP Revision?

These rules will result in reduced emissions of pollutants that contribute to ozone and fine particulate matter concentrations. The pollutants reduced by these regulations are volatile organic compounds, nitrogen oxides, carbon monoxide, and fine particulate matter, although the amount of reductions is not quantified. The approval of this rule will strengthen the Kansas SIP and assist the state in meeting and maintaining compliance with air quality standards, including the standard for ground level ozone.

Kansas's idling rule is generally consistent with EPA's "Model State Idling Law" (EPA420-S-06-001, April 2006). This model rule was developed with input from the states and industry to address idling issues in a consistent and understandable manner from state to state, to aid in compliance.

IV. Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

V. What Action is EPA Taking?

EPA is taking final action to approve the request to amend the Kansas SIP to include Kansas rules K.A.R.28-19-712 (Idle Reduction of Heavy Duty Diesel Vehicles) and K.A.R. 28-19-713 (Reduction of Nitrogen Oxides (NO_x) Emissions for the Kansas portion of the Kansas City Ozone Maintenance Area).

These rules were adopted by Kansas in response to a violation of the 8-hour ozone standard in Kansas City, based on 2005 through 2007 monitoring data, under the statutory authority granted by Kansas Statutes Annotated (K.S.A.) 65-3001 through 65-3028. The regulations were effective in Kansas on June 25, 2010.

We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comments on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR

52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress

and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [**FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register**]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can

withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Motor carriers, Motor vehicles, Motor vehicle pollution, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Transportation, Volatile organic compounds.

Dated: February 6, 2013.

Karl Brooks,
Regional Administrator,
Region 7.

40 CFR part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et. seq.*

Subpart R - Kansas

2. In § 52.870 the table in paragraph (c) is amended by adding new entries in alpha-numeric order for K.A.R. 28-19-712 and 28-19-713 under a new subheading entitled "Nitrogen Oxide Emissions" to read as follows:

§ 52.870 Identification of plan.

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(c) * * *

EPA-Approved Kansas Regulations

Kansas citation	Title	State effective date	EPA approval date	Explanation
Kansas Department of Health and Environment Ambient Air Quality Standards and Air Pollution Control				
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Nitrogen Oxide Emissions				
K.A.R. 28-19-712	Definitions.	06/25/10	[insert date of Federal Register publication] [insert Federal Register page number where the document begins]	
K.A.R. 28-19- 712a	Applicability.	06/25/10	[insert date of Federal Register publication] [insert Federal Register page number where the document begins] [insert date of	

Kansas citation	Title	State effective date	EPA approval date	Explanation
			<u>Federal Register</u> publication] [insert <u>Federal Register</u> page number where the document begins]	
K.A.R. 28-19- 712b	General requirement for heavy-duty diesel vehicles.	06/25/10	[insert date of <u>Federal Register</u> publication] [insert <u>Federal Register</u> page number where the document begins]	
K.A.R. 28-19- 712c	General requirement for load and unload locations.	06/25/10	[insert date of <u>Federal Register</u> publication] [insert <u>Federal Register</u> page number where the document begins]	
K.A.R. 28-19- 712d	Exemptions.	06/25/10	[insert date of <u>Federal Register</u> publication] [insert <u>Federal Register</u> page number where the document begins]	
K.A.R. 28-19-713	Applicability.	06/25/10	[insert date of <u>Federal Register</u> publication] [insert <u>Federal Register</u> page number where the document begins]	
K.A.R. 28-19- 713a	Emission limitation requirements.	06/25/10	[insert date of <u>Federal Register</u> publication] [insert <u>Federal Register</u> page number where the document begins]	
K.A.R. 28-19- 713b	Alternate emissions limit.	06/25/10	[insert date of <u>Federal Register</u> publication] [insert <u>Federal Register</u> page number where the document begins]	
K.A.R. 28-19- 713c	Control measures and equipment.	06/25/10	[insert date of <u>Federal Register</u> publication] [insert <u>Federal</u>	

Kansas citation	Title	State effective date	EPA approval date	Explanation
			<u>Register</u> page number where the document begins]	
K.A.R. 28-19-713d	Compliance demonstration, monitoring, and reporting requirements.	06/25/10	[insert date of <u>Federal Register</u> publication] [insert <u>Federal Register</u> page number where the document begins]	
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[FR Doc. 2013-03749 Filed 02/19/2013 at 8:45 am; Publication Date: 02/20/2013]